

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

Southern Services Company,  
Inc., Georgia Power Company, Alabama  
Power Company, Mississippi Power  
Company, Gulf Power Company, and  
Savannah Electric & Power Company

Notice of Violation

EPA-CAA-2000-04-0006

Proceedings Pursuant to  
Section 113(a)(1) of the  
Clean Air Act, 42 U.S.C.  
§7413(a)(1)

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**NOTICE OF VIOLATION**

This Notice of Violation ("NOV") is issued to Southern Company Services, Inc. (Southern), Georgia Power Company, Alabama Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric & Power Company (hereinafter referred to collectively as the "Southern Companies") for violations of the Clean Air Act ("the Act") at the coal-fired power plants identified below. The Southern Companies have embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and/or increase capacity at their coal-fired power plants.

Commencing at various times from 1977 to the present, the Southern Companies have modified and operated the coal-fired power plants identified below without obtaining New Source Review ("NSR") permits authorizing the construction and operation of physical modifications at their boiler units as required by the Act. In addition, for each physical modification at these power plants, the Southern Companies have operated these modifications without installing pollution control equipment required by the Act. These violations of the Act and the State Implementation Plans ("SIP") of Georgia, Alabama, Mississippi and Florida have resulted in the release of massive amounts of Sulfur Dioxide ("SO<sub>2</sub>"), Nitrogen Oxides ("NO<sub>x</sub>"), and Particulate Matter ("PM") into the environment. Until these violations are corrected, the Southern Companies will continue to release massive amounts of illegal SO<sub>2</sub>, NO<sub>x</sub>, and PM into the environment.

This NOV is issued pursuant to Section 113(a)(1) of the Act, as amended, 42 U.S.C.A. Section 7401-7671q. Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the

violations. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region 4 and further redelegated to the Director, Air, Pesticides and Toxics Management Division, EPA, Region 4.

#### STATUTORY AND REGULATORY BACKGROUND

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plants that are the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.
2. The NSR provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain this permit, the source must agree to put on the best available control technology ("BACT") for an attainment pollutant or achieve the lowest achievable emission rate ("LAER") in a nonattainment area, or in the case of a modification that is not major, must meet the emission limit called for under the applicable minor NSR program.
3. Pursuant to the Act, the SIP of Georgia requires that no construction or operation of a modification of a major stationary source occur without first obtaining a NSR permit. See: for PSD permits in attainment areas, 40 C.F.R. § 52.21(i), and Section 7 of Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02, which is part of the Georgia SIP that was approved by EPA on September 18, 1979, as amended on February 10, 1982 (47 Fed. Reg. 6017), December 14, 1992 (57 Fed. Reg. 58989) and February 2, 1996 (61 Fed. Reg. 3817); for NSR permits in nonattainment areas, Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.03, which is part of the Georgia SIP that was approved by EPA on September 18, 1979 (44 Fed. Reg. 54047) and amended on March 8, 1995 (60 Fed. Reg. 12688); for minor modifications regardless of attainment status, Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.03, which is part of the Georgia SIP that was approved by EPA on August 20, 1976 (41 Fed. Reg. 35184), and amended on September 18, 1979 (44 Fed. Reg. 54047) and on March 8, 1995 (60 Fed. Reg. 12688).

4. Pursuant to the Act, the SIP of Alabama requires that no construction or operation of a modification of a major stationary source occur without first obtaining a permit. See: for PSD permits in attainment areas, 40 C.F.R. § 52.21(i), and Alabama Department of Environmental Management Code 335-3-14-.04(8), which is part of the Alabama SIP that was approved by EPA on March 9, 1983 (48 Fed. Reg. 9860); for NSR permits in nonattainment areas, Alabama Department of Environmental Management Code 335-3-14-.05, which is part of the Alabama SIP that was approved by EPA on November 10, 1981 (46 Fed. Reg. 55518), as amended on December 28, 1987 (52 Fed. Reg. 48812); and for minor modifications regardless of attainment status, Alabama Department of Environmental Management Code 335-3-14-.01, which is part of the Alabama SIP that was approved by EPA on November 10, 1981 (46 Fed. Reg. 55518), as amended on December 28, 1987 (52 Fed. Reg. 48812).
  
5. Pursuant to the Act, the SIP of Mississippi requires that no construction or operation of a modification of a major stationary source occur without first obtaining a permit. See: for PSD permits in attainment areas, 40 C.F.R. § 52.21(i), and Mississippi Commission on Natural Resources regulation APC-S-5, which is part of the Mississippi SIP that was approved by EPA on October 15, 1990 (55 Fed. Reg. 41692), and amended on June 14, 1992 (57 Fed. Reg. 34252), on May 5, 1995 (60 Fed. Reg. 22287), and July 15, 1997 (62 Fed. Reg. 37724); for NSR permits in nonattainment areas, Mississippi Commission on Natural Resources regulation APC-S-2, Section IV, which is part of the Mississippi SIP that was approved by EPA on February 4, 1972 (37 Fed. Reg. 10875), as amended on September 15, 1994 (59 Fed. Reg. 47258) and on May 2, 1995 (60 Fed. Reg. 21442); and for minor modifications regardless of attainment status, Mississippi Commission on Natural Resources regulation APC-S-2, Sections III and IV, which are part of the Mississippi SIP that was approved by EPA on February 4, 1972 (37 Fed. Reg. 10875), as amended on September 15, 1994 (59 Fed. Reg. 47258) and on May 2, 1995 (60 Fed. Reg. 21442).
  
6. Pursuant to the Act, the SIP of Florida requires that no construction or operation of a modification of a major stationary source without first obtaining a permit. See: for PSD permits in attainment areas, 40 C.F.R. § 52.21(i), and the current Florida SIP Rule 62-212.400, Florida Administrative Code (F.A.C.), which is part of the Florida SIP that was approved by EPA on November 22, 1983 (48 Fed. Reg. 52716), and amended on October 20, 1994 (59 Fed. Reg. 52916), and on January 11, 1995 (60 Fed. Reg. 2688); for NSR permits in nonattainment areas, 40 C.F.R. § 52.24(a), and Florida SIP Rule 62-212.500, F.A.C., which was approved by EPA on November 22, 1983 (48 Fed. Reg. 52716), and amended on October 20, 1994 (59 Fed. Reg. 52916); and for minor NSR permits regardless of attainment status, 62-212.300, F.A.C., which is part of the Florida SIP that was approved by EPA on October 20, 1994 (59 Fed. Reg. 52916).

No SIP-approval for PSD has been given to the State of Florida for power plants which are also subject to the Florida Power Plant Siting Act (PPSA). Rather, Florida has a fully delegated PSD program with respect to power plants subject to the PPSA. Florida implements this delegation under 40 C.F.R. Section 52.21, whose provisions are incorporated by reference into the Florida SIP pursuant to 40 C.F.R. Section 52.530.

7. The SIP provisions identified in paragraphs 3-7 above are all federally enforceable pursuant to Sections 110 and 113 of the Act.

#### **FACTUAL BACKGROUND**

8. The Southern Companies are owners and/or operators of the facilities that are the subject of this NOV.
9. Southern and Georgia Power Company operate the Scherer Plant, a fossil fuel-fired electric utility steam generating plant located at 10986 Highway 87, Monroe County, Juliette, Georgia, 31046. The plant consists of 4 boiler units with up to 269,810,000 mmBTU annual heat input, and began operations in 1982.
10. Southern and Georgia Power Company operate the Bowen Plant, a fossil fuel-fired electric utility steam generating plant located at 317 Covered Bridge Road, Bartow County, Cartersville, Georgia, 30120. The plant consists of 4 boiler units with 207,281,000 mmBTU annual heat input in 1998, and began operations in 1972.
11. Southern and Savannah Power Company operate the Kraft Plant, a fossil fuel-fired electric utility steam generating plant located at P.O. Box 4068, Chatham County, Port Wentworth, Georgia, 31407. The plant consists of 4 boiler units, with 7,630,000 mmBTU annual heat input in 1997, and began operations in 1972.
12. The Scherer, Bowen and Kraft Plants are located in areas that have the following attainment/nonattainment classifications from 1979 to the present:

For NO<sub>2</sub>, the areas have been classified attainment or unclassifiable;

For SO<sub>2</sub>, the areas have been classified attainment or unclassifiable;

For PM, the areas have been classified attainment or unclassifiable;

For Ozone, the areas have been classified attainment or unclassifiable.

13. Southern and Alabama Power Company operate the Gorgas Steam Plant, a fossil fuel-fired electric utility steam generating plant located at 460

Gorgas Road, Walker County, Parrish, Alabama, 35580. The plant consists

of 5 boiler units (Nos. 6-10) with 89,621,000 mmBTU annual heat input in 1997, and began operations in 1972.

14. Southern and Alabama Power Company operate the Greene County Plant, a fossil fuel-fired electric utility steam generating plant located at Highway 83 and County Road 18, Greene County, Forkland, Alabama, 36732. The plant consists of 2 boiler units with 34,249,000 mmBTU annual heat input in 1997, and began operations in 1966.

15. The Gorgas and Green County Plants are located in areas that have the following attainment/nonattainment classifications from 1980 to the present:

For NO<sub>2</sub>, the areas have been classified attainment or unclassifiable;

For SO<sub>2</sub>, the areas have been classified attainment or unclassifiable;

For PM, the areas have been classified attainment or unclassifiable.

For Ozone, the areas have been classified attainment or unclassifiable.

16. Southern and Alabama Power Company operate the Barry Steam Plant, a fossil fuel-fired electric utility steam generating plant located at P.O. Box 70, Mobile County, Bucks, Alabama, 36512. The plant consists of 5 boiler units with 119,483,000 mmBTU annual heat input in 1997, and began operations in 1971.

17. The Barry Steam Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

For SO<sub>2</sub> and NO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For, Ozone, the area has been classified nonattainment until June 12, 1987 and attainment since that time; and

For TSP, the area has been classified nonattainment until November 15, 1984, and attainment since that time.

18. Southern and Alabama Power Company operate the Gaston Steam Plant, a fossil fuel-fired electric utility steam generating plant located at P.O. Box 1127, Shelby County, Wilsonville, Alabama, 35186. The plant consists of 5 boiler units with 111,239,000 mmBTU annual heat input in 1997, and began operations in 1974.

19. The Gaston Steam Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

For NO<sub>2</sub>, the area has been classified attainment or

unclassifiable;

For SO<sub>2</sub>, the area has been classified attainment or

unclassifiable;

For PM, the area has been classified attainment or unclassifiable.

For Ozone, the area has been classified attainment

20. Southern and Alabama Power Company operate the Miller Plant, a fossil fuel-fired electric utility steam generating plant located at 42050 Porter Road, Jefferson County, Quinton, Alabama, 35130. The plant consists of 4 boiler units with 204,211,519 mmBTU annual heat input in 1998, and began operations in 1978.
21. The Miller Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
 

For NO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For SO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For PM, the area has been classified attainment or unclassifiable.

For Ozone, the area has been classified attainment or unclassifiable.
22. Southern and Mississippi Power Company operate the Watson Electric Generating Plant, a fossil fuel-fired electric utility steam generating plant located at P.O. Box 4079, Harrison County, Gulfport, Mississippi, 39502. The plant consists of 2 boiler units (Nos. 4-5) with 46,831,000 mmBTU annual heat input in 1997, and began operations in 1973.
23. The Watson Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
 

For NO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For SO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For PM, the area has been classified attainment or unclassifiable.

For Ozone, the area has been classified attainment.
24. Southern and Gulf Power Company operate the Crist Plant, a fossil fuel-fired electric utility steam generating plant located at One Energy Place, Escambia County, Pensacola, Florida, 32520. The plant consists of 4 boiler units (Nos. 4-7) with 44,407,000 mmBTU annual heat input in 1997, and began operations in 1973.
25. The Crist Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

For NO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For SO<sub>2</sub>, the area has been classified attainment or unclassifiable;

For PM, the area has been classified attainment or unclassifiable.

For ozone, the area has been classified attainment.

26. Each of the plants identified in paragraphs 9 through 25 above emits or has the potential to emit at least 100 tons per year of NO<sub>x</sub>, SO<sub>2</sub> and/or PM and is a major stationary source under the Act.

### VIOLATIONS

#### Georgia Power Plants

##### A. Scherer Plant

27. In 1979, the Southern and Georgia Power Company "commenced construction" as that term is defined in the 1974 EPA PSD regulations, 40 C.F.R. § 51.21(b), and the Georgia SIP, Section 7 of Georgia Department of Natural Resources Air Quality Control Rule Chapter 391-3-1-.02, on the Scherer Plant in Juliette, Georgia. Construction on Units 3 and 4 was not completed until 1987 and 1989, respectively.
28. For each of these new source constructions that occurred at the Scherer Plant, neither Southern nor Georgia Power obtained a PSD permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7) nor a minor NSR permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.03.
29. None of this new source construction falls within the exemptions found at 40 C.F.R. § 52.21(i), because neither Southern nor Georgia Power ever obtained a PSD permit under the 1974 EPA PSD regulations, and the work was not completed in a reasonable time.
30. Each of these new source constructions resulted in a net significant increase in emissions, as that term is defined in 40 C.F.R. § 52.21(b), and Section 7 of Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02, for NO<sub>x</sub>, SO<sub>2</sub> and/or PM from Units 3 and 4 of the Scherer Plant.
31. Therefore, Southern and Georgia Power violated and continue to violate the Georgia SIP by constructing and operating the Scherer Plant without the necessary permit required by EPA and the Georgia SIP.
32. Each of these violations exists from the date of start of construction of Units 3 and 4, respectively, until the time that the Southern Company and Georgia Power obtain the appropriate NSR permit and operate the



necessary pollution control equipment to satisfy the Georgia SIP.

B. Bowen Plant

33. On numerous occasions between 1979 and the date of this Notice, Southern and Georgia Power have made "modifications" to the Bowen Plant as defined by the Georgia SIP, Section 7 of Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02. These modifications include the replacement and redesign of the economizer for Unit 2 in 1992.
34. For each of the modifications that occurred at the Bowen Plant, neither Southern nor Georgia Power obtained a PSD permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7), nor a minor NSR permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.03. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7).
35. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7). Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
36. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7). This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a

Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and

in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1<sup>st</sup> Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).

37. None of these modifications fall within the "demand growth" exemption found at Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7), because for each modification a physical change was performed which resulted in the emissions increase.
38. Each of these modifications resulted in a net significant increase in emissions, as that term is defined at Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7) from the Bowen Plant for NO<sub>x</sub>, SO<sub>2</sub> and/or PM.
39. Therefore, Southern and Georgia Power violated and continue to violate the Georgia SIP by constructing and operating modifications at the Bowen Plant without the necessary permit required by the Georgia SIP.
40. Each of these violations exists from the date of start of construction of the modification until the time that Southern and Georgia Power obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy the Georgia SIP.

#### Alabama Power Plants

##### C. Miller Plant

41. In 1979, Southern and Alabama Power "commenced construction" as that term is defined in the 1974 EPA PSD regulations, 40 C.F.R. § 51.21(b), and the Alabama SIP, ADEM Code 335-3-14-.04, on the Miller Plant in Quinton, Alabama. Construction on Units 3 and 4 was not completed until 1989 and 1991, respectively.
42. For each of the new source constructions that occurred at the Miller Plant, neither Southern nor Alabama Power obtained a PSD permit pursuant to ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Code 335-3-14-.01.
43. None of this new source construction falls within the exemptions found at 40 C.F.R. § 52.21(i), because neither Southern nor Alabama Power ever obtained a PSD permit under the 1974 or 1978 EPA PSD regulations, and the work was not completed in a reasonable time.
44. Each of these new source constructions resulted in a net significant increase in emissions, as that term is defined in 40 C.F.R. § 52.21(b), and ADEM Code 335-3-14-.04(2), for NO<sub>x</sub>, SO<sub>2</sub> and/or PM from Units 3 and 4 of the Miller Plant.



45. Therefore, Southern and Alabama Power violated and continue to violate the Alabama SIP by constructing and operating the Miller Plant without the necessary permit required by EPA and the Alabama SIP.
46. Each of these violations exists from the date of start of construction of Units 3 and 4, respectively, until the time that Southern and Alabama Power obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy the Alabama SIP.

D. Barry, Gorgas, Gaston and Greene County Plants

47. On numerous occasions between 1979 and the date of this Notice, Southern and Alabama Power have made "modifications" of the Barry Plant as defined by the Alabama SIP, Alabama Department of Environmental Management (ADEM) Code 335-3-14-.04(2)(b)(1). These modifications include the installation of a new economizer on Unit 5 in 1993.
48. For each of the modifications that occurred at the Barry Plant, neither Southern nor Alabama Power obtained a PSD permit pursuant to ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Rule 335-3-14-.01. In addition, no information was provided to the permitting agency of actual emissions after a modification as required by ADEM Code 335-3-14-.03.
49. On numerous occasions between 1979 and the date of this Notice, Southern and Alabama Power have made "modifications" of the Gorgas Plant as defined by the Alabama SIP, ADEM Code 335-3-14-.04(2)(b)(1). These modifications included, but are not limited to, the balanced draft conversion of Unit 10 in 1985, the installation of a new economizer on Unit 10 in 1994, and installation of redesigned air heaters on Unit 10 in 1994.
50. For each of these modifications that occurred at the Gorgas Plant, neither Southern nor Alabama Power obtained a PSD permit pursuant to ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Rule 335-3-14-.01. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emissions after the modification as required by ADEM Code 335-3-14-.03.
51. On numerous occasions between 1979 and the date of this Notice, Southern and Alabama Power have made "modifications" of the Gaston Plant as defined by the Alabama SIP, ADEM Code 335-3-14-.04(2)(b)(1). These modifications include the replacement of the front reheater for Unit 5 in 1991.
52. For each of the modifications that occurred at the Gaston Plant, neither the Southern Company nor Alabama Power obtained a PSD permit pursuant to

ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Rule 335-3-14-.01. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required by ADEM Code 335-3-14-.03.

53. On numerous occasions between 1979 and the date of this Notice, Southern and Alabama Power have made "modifications" of the Greene County Plant as defined by the Alabama SIP, ADEM Code 335-3-14-.04(2)(b)(1). These modifications include the replacement of the primary reheater for Unit 2 in 1989.
54. For each of the modifications that occurred at the Greene Plant, neither Southern nor Alabama Power obtained a PSD permit pursuant to ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Rule 335-3-14-.01. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by ADEM Code 335-3-14-.03.
55. The modifications at the Barry, Gorgas, Gaston, and Greene County plants do not fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or ADEM Code 391-3-14-.04(8). Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
56. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or ADEM Code 391-3-14-.04(8). This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation

of this exemption was upheld twice by the court of appeals, in 1989 and

in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1<sup>st</sup> Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).

57. Each of the modifications at the Barry, Gorgas, Gaston, and Greene County plants resulted in a net significant increase in emissions, as that term is defined in ADEM Code 335-3-14-.04(2)(w), for NO<sub>x</sub>, SO<sub>2</sub> and/or PM.
58. Therefore, Southern and Alabama Power violated and continue to violate the Alabama SIP by constructing and operating modifications at the Barry, Gorgas, Gaston, and Greene County Plants without the necessary permit required by EPA and by the Alabama SIP.
59. Each of these violations exists from the date of start of construction of the modification until the time that Southern and Alabama Power obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy EPA and the Alabama SIP.

#### E. Watson Plant

60. On numerous occasions between 1979 and the date of this Notice, Southern and Mississippi Power Company have made "modifications" of the Watson Plant as defined by the Mississippi SIP, Mississippi Commission on Natural Resources regulation APC-S-2, Section I. These modifications include the replacement of the economizer at Unit 5 in 1992.
61. For each of the modifications that occurred at the Watson Plant, neither Southern nor Mississippi Power obtained a PSD permit pursuant to Mississippi Commission on Natural Resources regulation APC-S-2, Section IV, a nonattainment NSR permit pursuant to Mississippi Commission on Natural Resources regulation APC-S-2, Section IV, nor a minor permit pursuant to Mississippi Commission on Natural Resources regulation APC-S-2, Section III.
62. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or Mississippi Commission on Natural Resources regulation APC-S-2, Section I. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric



Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).

63. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or Mississippi Commission on Natural Resources regulation APC-S-2, Section I. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1<sup>st</sup> Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
64. Each of these modifications resulted in a net significant increase in emissions, as that term is defined in Mississippi Commission on Natural Resources regulation APC-S-2, Section I, from the Watson Plant for NO<sub>x</sub>, SO<sub>2</sub> and/or PM.
65. Therefore, Southern and Mississippi Power violated and continue to violate the Mississippi SIP by constructing and operating modifications at the Watson Plant without the necessary permit required by EPA and the Mississippi SIP.
66. Each of these violations exists from the date of start of construction of the modification until the time that Southern and Mississippi Power obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy EPA and the Mississippi SIP.

#### F. Crist Plant

67. On numerous occasions between 1979 and the date of this Notice, Southern and Gulf Power Company have made "modifications" at the Crist Plant as defined by both the EPA PSD Regulations, 40 C.F.R. Part 51, Section 52.21(b), and Florida SIP Rule 62-212.400, F.A.C. These modifications include the replacement of the economizer at Unit 7 in 1996.
68. For each of the modifications that occurred at the Crist Plant, neither Southern nor Gulf Power obtained a PSD permit pursuant to 40 C.F.R. § 52.21 and Florida regulation 62-212.400, F.A.C., a nonattainment NSR permit pursuant to 40 C.F.R. § 52.24 and Florida regulation 62-212.500, F.A.C., nor a minor source permit pursuant to the Florida SIP, regulation 62-212.300, F.A.C. In addition, for modifications after

1992, no information was provided to the permitting agency of actual

emissions after the modification as required by 40 C.F.R. § 52.21(b)(21)(v).

69. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 51.21(b)(2)(iii)(a), or Florida regulation 62-210.200(183)(a)1a, F.A.C. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
70. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or Florida regulation 62-210.200(183)(a)1a, F.A.C. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1<sup>st</sup> Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
71. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b), because for each modification a physical change was performed which resulted in the emissions increase.
72. Each of these modifications resulted in a net significant increase in emissions, as that term is defined in 40 C.F.R. § 51.21(b), from the Crist Plant for NO<sub>x</sub>, SO<sub>2</sub> and/or PM.
73. Therefore, Southern and Gulf Power violated and continue to violate the Florida SIP by constructing and operating modifications at the Crist Plant without the necessary permit required by the EPA PSD regulations and the Florida SIP.

74. Each of these violations exists from the date of start of construction of the modification until the time that Southern and Gulf Power obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy the EPA PSD regulations and the Florida SIP.

M. Plant Kraft

75. On numerous occasions between 1979 and the date of this Notice, Southern and Savannah Power Company have made "modifications" at the Kraft Plant as defined by the Georgia SIP, Section 7 of Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02. These modifications include the balanced draft conversion of Unit 3 in 1985.
76. For each of the modifications that occurred at the Kraft Plant, neither Southern nor Savannah Power obtained a PSD permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7), a nonattainment NSR permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.03, nor a minor NSR permit pursuant to Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.03. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7).
77. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7). Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
78. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7). This exemption is limited to stand-alone increases in operating hours or production rates, not where

such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1<sup>st</sup> Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).

79. None of these modifications fall within the "demand growth" exemption found at Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7), because for each modification a physical change was performed which resulted in the emissions increase.
80. Each of these modifications resulted in a net significant increase in emissions, as that term is defined within Georgia Department of Natural Resources Air Quality Control Rule 391-3-1-.02(7), from the Kraft Plant for NO<sub>x</sub>, SO<sub>2</sub> and/or PM.
81. Therefore, Southern and Savannah Power violated and continue to violate the Georgia SIP by constructing and operating modifications at the Kraft Plant without the necessary permit required by the Georgia SIP.
82. Each of these violations exists from the date of start of construction of the modification until the time that Southern and Savannah Power obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy the Georgia SIP.

#### **ENFORCEMENT**

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997, and no more than \$27,500 per day for each violation after January 30, 1997.

#### **OPPORTUNITY FOR CONFERENCE**

Respondents may, upon request, confer with EPA. The conference will enable Respondents to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondents have the right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the

NOV should be make in writing to:

Charles V. Mikalian  
Associate Regional Counsel  
Environmental Accountability Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
404-562-9575

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

Effective Date

This NOV shall become effective immediately upon issuance.

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Date

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John H. Hankinson, Jr.  
Regional Administrator  
EPA, Region 4

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Mikalian

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Tommelleo

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Hockett

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Bouma

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Dubose

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Spagg

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Kutzman

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Smith

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Lynch

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Hankinson